

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

AMAZON.COM, INC. and AMAZON DATA
SERVICES, INC.,

Plaintiffs,

v.

WDC HOLDINGS LLC dba NORTHSTAR
COMMERCIAL PARTNERS; BRIAN
WATSON; STERLING NCP FF, LLC;
MANASSAS NCP FF, LLC; NSIPI
ADMINISTRATIVE MANAGER; NOVA
WPC LLC; WHITE PEAKS CAPITAL LLC;
VILLANOVA TRUST; CARLETON
NELSON, CASEY KIRSCHNER; ALLCORE
DEVELOPMENT LLC; FINBRIT
HOLDINGS LLC; CHESHIRE VENTURES
LLC; 2010 IRREVOCABLE TRUST; SIGMA
REGENERATIVE SOLUTIONS LLC;
CTBSRM, INC.; RODNEY ATHERTON;
DEMETRIUS VON LACEY; RENRETS
LLC,

Defendants.

CASE NO. 1:20-CV-484-RDA-IDD

800 HOYT LLC,

Intervening Interpleader
Plaintiff / Intervening
Interpleader Counter-
Defendant,

v.

BRIAN WATSON; WDC HOLDINGS, LLC;
BW HOLDINGS, LLC,

Interpleader Defendants,

and

AMAZON.COM, INC., and AMAZON DATA
SERVICES, INC.,

Interpleader Defendants /
Interpleader Counter-Plaintiffs.

**PLAINTIFFS' MOTION TO EXTEND CASE DEADLINES
AND BRIEFING LIMIT RELATING TO SUMMARY JUDGMENT**

Plaintiffs Amazon.com, Inc. and Amazon Data Services, Inc. (“Amazon” or “Plaintiffs”) hereby respectfully move this Court under Federal Rule of Civil Procedure 16(b)(4) and Local Rule 16(B) to modify certain case deadlines (Dkt. 1023) relating to summary judgment and for leave to file a single, consolidated response to Defendants’ motions for summary judgment.¹ The relevant remaining case deadlines, with Amazon’s requested extensions in bold, are listed below:

Deadline	Current	Request
Summary Judgment Motions	January 11, 2023	January 11, 2023
Summary Judgment Responses	January 25, 2023	February 8, 2023
Summary Judgment Replies	February 1, 2023	February 15, 2023
Summary Judgment Hearing	February 8, 2023	February 22, 2023
Deadline to Notify re Mediation	March 1, 2023	March 1, 2023
Deadline to Start Mediation	March 15, 2023	March 15, 2023
Trial	May 1, 2023	May 1, 2023

As shown in the chart, Amazon requests a two-week extension to the deadline to file summary judgment responses, and a corresponding two-week extension to the deadline to file summary judgment replies and to the date of the summary judgment hearing. There is good cause for the court to extend these deadlines given the likelihood that each Defendant will file a separate motion for summary judgment and because the current schedule provides only two weeks for the parties to prepare their responses.

Relatedly, Amazon also seeks leave of the Court to file a single, over-sized response to Defendants’ motions for summary judgment of no more than fifty (50) pages. Because Defendants’ motions for summary judgment are likely to raise similar issues of law and fact, a single,

¹ Amazon emailed Defendants on December 22, 2022 to obtain their position on these requests. The Watson Defendants consent to Amazon’s request to file a single, over-sized response brief of up to fifty pages but do not consent to the requested extension of the briefing schedule. The other Defendants had not provided a position on these requests at the time of filing.

consolidated response would allow Amazon to avoid unnecessarily duplicating its arguments and thus make it more efficient for the Court to assess the parties' arguments and decide these motions.

On September 21, 2022, the parties to this action filed a joint motion to extend certain case deadlines. Dkt. 1020. This motion was necessitated by the serious illness of Defendants Rodney Atherton's wife, which not only required the postponement of Atherton's deposition, but also had cascading effects that led the parties to move to postpone other case deadlines. On the same day, the Court granted the joint motion, thus establishing the operative deadlines relating to summary judgment. Dkt. 1023. Then, at the pre-trial conference on October 20, 2020, the Court set a trial date of May 1, 2022, and also directed the parties to contact the Court no later than March 1, 2023 to set up a settlement conference and to begin that process no later than March 15, 2023. Dkt. 1078. Since the pre-trial conference, the parties have only requested minor modifications to the case schedule relating to fact and expert discovery, which the Court granted on December 6, 2022. Dkt. 1109.

Under Federal Rule of Civil Procedure 16(b)(4) and Local Rule 16(B), courts may modify a scheduling order upon a showing of "good cause." Fed. R. Civ. P. 16(b)(4); E.D. Va. Loc. Civ. R. 16(B). In determining whether good cause has been established, courts consider four "discretion[ary]" factors: "[1] the danger of prejudice to the non-moving party, [2] the length of delay and its potential impact on judicial proceedings, [3] the reason for the delay, and [4] whether the movant acted in good faith." *Roe v. Howard*, No. 1:16-cv-562, 2017 WL 3709088, at *1 (E.D. Va. June 30, 2017); *see also Lewis v. Jayco, Inc.*, No. 3:19-cv-578, 2019 WL 4126504, at *3 (E.D. Va. Aug. 29, 2019) (noting that "[t]he primary consideration of the Rule 16(b) 'good cause' standard is the diligence of the movant"). For the reasons discussed below, Amazon has established good cause to extend the case deadlines in the manner described above.

First, there is no risk of prejudice to the non-moving parties. Amazon seeks only a two-week extension of certain deadlines relating to summary judgment. Moreover, Amazon is not the only party that will benefit from these extensions, as they will also give Defendants additional time to respond to Amazon's motion for summary judgment. Amazon's filing of a consolidated brief will also aid Defendants and the Court in assessing Amazon's arguments; if the motion is denied, Defendants and the Court would be required to sort through multiple briefs that would undoubtedly contain duplicative arguments. Further, as discussed below, these extensions will not affect other case deadlines. So even if the completion of summary judgment briefing is delayed by two weeks, no party can argue that the resolution of this *litigation* will be delayed because of these extensions.

Second, the length of the delay is minimal and will not affect the overall progress of this litigation. Granting this Motion would only delay completion of summary judgment briefing by two weeks. Moreover, even with these extensions, summary judgment will still be fully briefed *and* argued before the Court's deadline to begin mediation and well before trial is scheduled to begin. The proposed schedule will "permit[] a reasonable time for the Court to hear arguments and consider the merits" prior to trial. Loc. R. Civ. 56(B). Neither the mediation nor the trial deadlines will need to be modified due to the extensions requested in this motion, and thus the modifications will not "affect[] the progress of this case." *Russe v. United States*, No. 1:20-cv-92, 2022 WL 11965612, at *6 (W.D.N.C. Oct. 20, 2022).

Third, Amazon has provided valid reasons for requesting these extensions. As the Court is aware, Amazon has alleged a "massive fraud and kickback scheme orchestrated" by numerous individuals and entities who are parties to this action. Dkt. 764. Each Defendants is likely to file its own motion for summary judgment on many, if not all, of the eight claims brought by Amazon. Yet as it stands now, Amazon will have only two weeks to develop and file its response to these motions. Given the complex nature of this case, a two-week extension of the deadline to file

summary judgment responses, as well as permission from the Court to file a single, consolidated response, will give Amazon sufficient time to fully respond to Defendants' motions. It will also aid the Court by allowing it to review a single response that was prepared with the benefit of two additional weeks.

Finally, Amazon has acted diligently and in good faith in making this request. Amazon has not waited to request an extension after a deadline has already passed. *See, e.g., Stroud v. Tapp*, No. 1:20-cv-226, 2022 WL 2758539, at *1 (W.D.N.C. July 14, 2022) (“Discovery closed nearly six months ago, and the Plaintiff has failed to demonstrate good cause for reopening discovery at this late date.”). It has also made sure to request an extension that does not require modifications to other case deadlines, and thus respects the wishes of all parties to have this matter proceed to trial as expeditiously as possible. In short, Movants “ha[ve] not sat on [their] hands” while deadlines have passed, *Weisheit v. Rosenberg & Assocs., LLC*, 2018 WL 1942196, at *3 (D. Md. Apr. 25, 2018), and have “acted diligently in filing” this request, *Jayco, Inc.*, 2019 WL 4126504, at *3.

CONCLUSION

For the aforementioned reasons, there is good cause to modify the scheduling order by extending the deadlines relating to summary judgment as described above. There is also good cause to grant Amazon leave to file a single, consolidated response to Defendants' motions for summary judgment of no more than fifty (50) pages. Accordingly, the Court should grant this Motion.

Dated: December 23, 2022

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I will then send the document and a notification of such filing (NEF) to the following parties via U.S. mail to their last-known address and by email, where noted:

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